

RECORDING REQUESTED BY:
Deane Ross
Richmond Townhouses Apartments, Ltd.
12100 Wilshire Blvd., Suite 1400
Los Angeles, California 90025-7114



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2002-0171179-00

WHEN RECORDED, MAIL TO:

Barbara J. Cook, P.E., Chief
Department of Toxic Substances Control
Northern California -
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Acct 2- Chicago Title
Tuesday, MAY 14, 2002 12:17:00
FRE \$0.0011
Ttl Pd \$0.00 Nbr-0000869685
dar/R2/1-24

Chicago Title

6040051

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

(Re: Richmond Townhouses Apartments, Assessor Parcel # 513-010-019)

This Covenant and Agreement ("Covenant") is made by and between Richmond Townhouses Apartments, Ltd. (the "Covenantor"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Department of Toxic Substances Control ("the Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("HSC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471(c) and HSC section 25355.5 that the use of the Property be restricted as set forth in this Covenant.

* maps attached are informational only
for boundary + overview

5-11-02 3/14/02
11/3/02 2/1/02

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately ten acres, is more particularly described and depicted in Exhibit "A". The Property is located in the area now generally bounded by Florida Street to the north, the Tradeway Carpet Warehouse to the south, South 33rd Street to the east and Carlson Boulevard to the west, Contra Costa County, State of California. This property is more specifically described as Contra Costa County Assessor's Parcel Number: 513-010-019.

1.02. U.S. EPA has remediated the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. Sections 9601 et seq., and with the National Contingency Plan (40 C.F.R. Part 300), administered by the U.S. EPA. Because a hazardous substance, as defined in HSC section 25316, which is also a hazardous material as defined in HSC section 25260, lead, remains in the soil in and under the Property, a deed restriction is required as part of the site remediation. The Emergency Removal Action was approved by U.S. EPA on March 22, 2000. The removal activities consists of the removal of lead-contaminated near-surface soil, backfilling or capping excavated areas with clean fill or with concrete, and landscaping excavated area with either sod or shredded woodchip landscaping material. Exposed soil in the foyers, stairwells, porches and along the footings of the buildings throughout the site was excavated from the top three to six inches. After this shallow excavation, exposed areas were framed, rocked and cemented to a level grade with the surrounding sidewalks (Exhibits B 1 to B 5). The remainder of the site soil with the exceptions of the sidewalks and parking lots (both areas are paved) was excavated up to two feet depending on the lead concentration (Exhibits B6 to B10). Once excavation reached two feet or the lead concentration was below the action level, a geotextile fabric was laid and the excavation was backfilled with clean fill. The backfilled areas were then compacted and graded. The Cap, consisting of the cement and soil cover engineered by the U.S. EPA, also includes the parking lots, the sidewalks and the building foundations. The operation and maintenance activities of the Cap are pursuant to the Operation and Maintenance Plan.

1.03. As detailed in the Emergency Removal Action as approved by the U. S. EPA on March 22, 2000, all the surface and subsurface soils within 10 feet of the surface of the Property contain a hazardous substance, lead (400 to 7,480 parts per million), as defined in H&S Section 25316. The Property consists of a 199-unit apartment complex and an onsite day-care facility. The Department concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if the soil, concrete and asphalt cover remain undisturbed.

1.04. The restrictions set forth in this Covenant are necessary to preclude potential present and future users' exposure to lead which will remain in site soils after soil remediation is complete.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to, or an ownership interest in, all or any portion of the Property.

2.04. Occupant. "Occupant" means any Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. Cap : "Cap" means all cement, concrete and asphalt cover, including but not limited to sidewalks, parking lots, foyers, stairwells, porches and along the footings of the buildings, soil cover with a top layer of ground cover such as grass or shredded woodchip, and all building foundations at the Richmond Townhouse Apartments Site.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to HSC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. The Covenantor and all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department. Pursuant to HSC section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, the owner, lessor, assignor, or other transferor shall give the buyer, lessee, assignee, or

other transferee notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds, Leases, and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portions of the Property which are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON __[DATE]__, IN BOOK ____, PAGE ____, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance or other transfer of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance or transfer, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department as provided in Section 4.02.

4.02. Non-Interference with the Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap shall not be permitted on the Property without prior written approval by the Department. Covenantor shall give the Department at least sixty (60) days advance written notice prior to any proposed modifications, discontinuation or other disruption of the Cap. The written notice shall be sent by certified mail to the Department at the address set out in Paragraph 7.04. The written notice to the Department shall include a detailed description of the work to be done or modifications

- to be made and a map showing the exact location of the proposed work and the reasons for modification, disruption or discontinuation.
- (b) All uses and development of the Property shall preserve the integrity of the Cap unless prior written approval has been granted by the Department.
 - (c) Non-emergency Response Action/Notification. Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. The owner shall repair significant crack(s), or signs of deterioration within thirty (30) days of the discovery of such disturbance. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.
 - (d) Emergency Response Action/Notification. In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance), the Covenantor shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Department. The owner shall take such action in consultation with the Department and in accordance with all applicable provisions of this Agreement. Within seven (7) days of the onset of such an event, the owner shall furnish a report to the Department, signed by Covenantor's Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto.
 - (e) Soil Management. No activities that will disturb the Cap shall be permitted on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and shall not be removed from the Property without prior written approval by the Department

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, periodic reviews, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities relating to the Cap shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with HSC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when

delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Deane Ross, President, Westport Housing Corporation, General Partner of
Richmond Townhouse Apartments, Ltd.
12100 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025-7114

To DTSC: Barbara J. Cook, P.E., Chief
Department of Toxic Substances Control
Northern California-Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein, or the application of it to any person or circumstance, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.


Covenantor: Richmond Townhouse Apartments, Ltd.

By: Westport Housing Corporation, General Partner

By: 

Deane Earl Ross

Title: President

Date:  8-29-2001

Department of Toxic Substances Control

By: 

Date: 1-10-02

Title: Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch
STATE OF CALIFORNIA)
)

STATE OF: CALIFORNIA

171179

COUNTY OF LOS ANGELES

On this 6TH day of SEPTEMBER, in the year 2001,

before me SUZANNE MAGNUSON, Notary Public, personally appeared

DEANE EARL ROSS

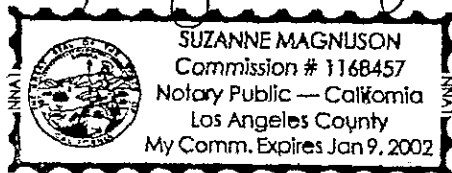
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person~~(s)~~ whose name~~(s)~~ is ~~/are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

L.S.

Signature

Suzanne Magnuson



STATE OF CALIFORNIA

171179

COUNTY OF ALAMEDA

On this 10th day of JANUARY, in the year 2002,

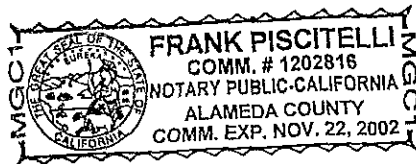
before me Frank Piscitelli, personally appeared

BARBARA JEAN COOK

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

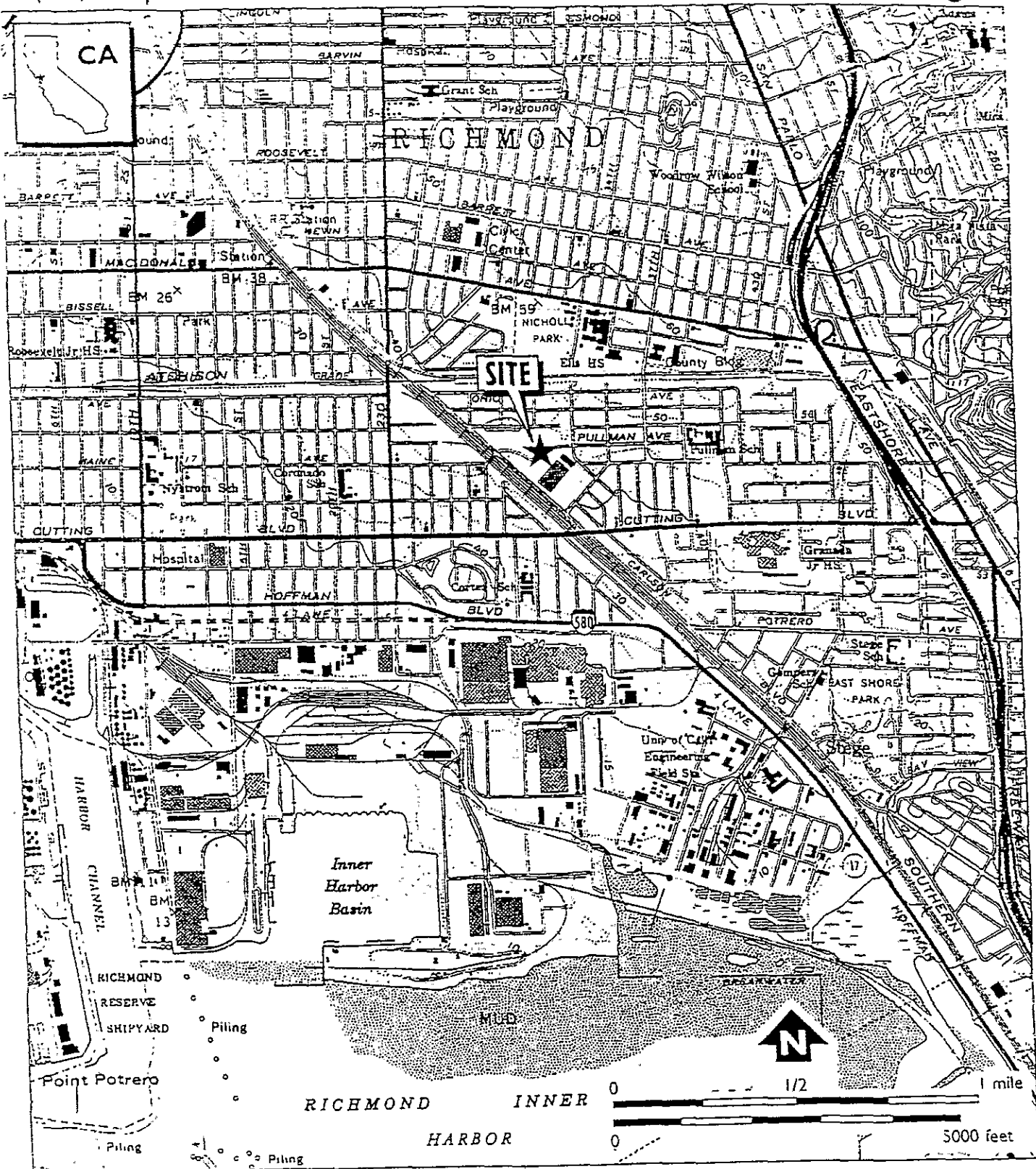
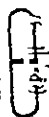
WITNESS my hand and official seal.

Signature



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EXHIBIT A



Ecology and Environment, Inc.

Dr. No: 09.0516.PPRS.XX.1
 TDD: 09-0062-0005
 PAN: 0516-PPRS-XX
 Date: 04/03/2000
 File: Z.44

Figure 2-1
SITE LOCATION MAP
 Pullman-Plomo Site
 2887 Pullman Avenue
 Richmond, California

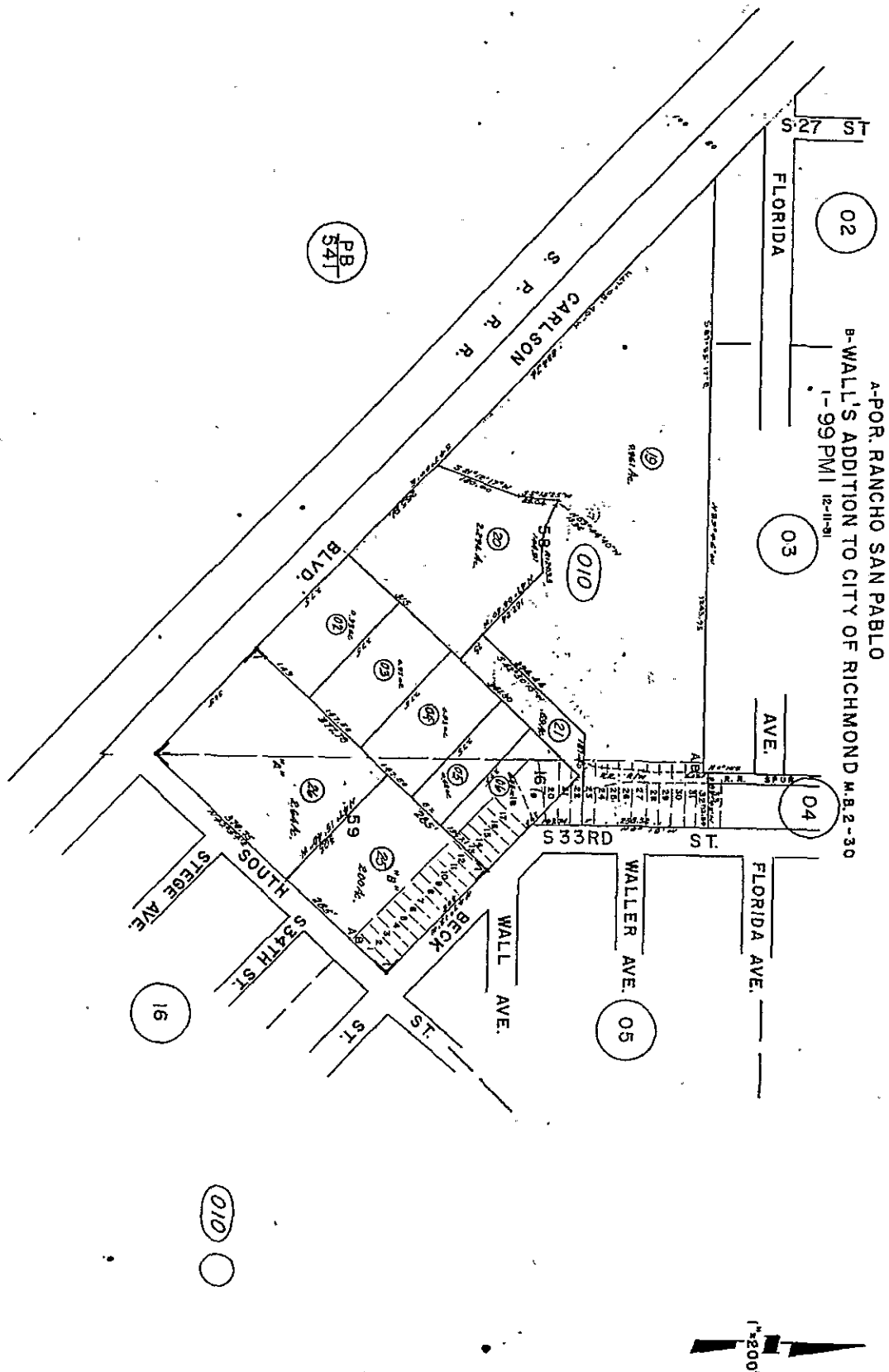
DESCRIPTION

CITY OF RICHMOND

BEGINNING AT THE INTERSECTION OF THE NORTHEASTERN LINE OF CARLSON BOULEVARD, 80 FEET IN WIDTH, WITH THE NORTHERN LINE OF LOT 58, AS SHOWN ON THE MAP OF THE SAN PABLO RANCHO, FILED MARCH 1, 1894 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY; THENCE ALONG THE LAST NAMED LINE AND ITS DIRECT EXTENSION EASTERLY, SOUTH 89° 55' 17" EAST 1243.95 FEET TO A WESTERN LINE OF THE STRIP OF LAND DESIGNATED "1' STRIP RESERVED" ON THE MAP OF WALL'S ADDITION TO THE CITY OF RICHMOND, FILED MARCH 22, 1909 IN BOOK 2 OF MAPS, PAGE 30, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY; THENCE ALONG SAID WESTERN LINE NORTH 0° 17' 55" EAST 6.01 FEET TO A POINT ON THE DIRECT EXTENSION WESTERLY OF THE NORTHERLY LINE OF LOT 32, IN BLOCK 167, AS SHOWN ON SAID MAP OF WALL'S ADDITION TO THE CITY OF RICHMOND; THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 32, NORTH 89° 42' 00" EAST 112.50 FEET TO THE WESTERN LINE OF SOUTH 33RD STREET, AS SHOWN ON LAST SAID MAP; THENCE ALONG LAST SAID LINE SOUTH 0° 18' EAST 258.52 FEET; THENCE SOUTH 89° 42' WEST 187.40 FEET; THENCE SOUTH 42° 50' 15" WEST 294.44 FEET; THENCE NORTH 47° 08' 40" WEST 182.24 FEET TO A POINT ON THE ARC OF A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 203.50 FEET, A RADIAL LINE OF SAID CURVE TO LAST SAID POINT BEARS SOUTH 10° 32' 35" EAST; THENCE WESTERLY AND NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 40° 47' 55", A DISTANCE OF 144.91 FEET; THENCE TANGENT TO LAST SAID CURVE NORTH 59° 44' 40" WEST 13.96 FEET; THENCE SOUTH 5° 15' 25" WEST 85.04 FEET; THENCE SOUTH 21° 12' 17" WEST 180.00 FEET TO SAID NORTHEASTERN LINE OF CARLSON BOULEVARD; THENCE ALONG LAST SAID LINE NORTH 47° 08' 40" WEST 834.74 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO.: 513-010-019

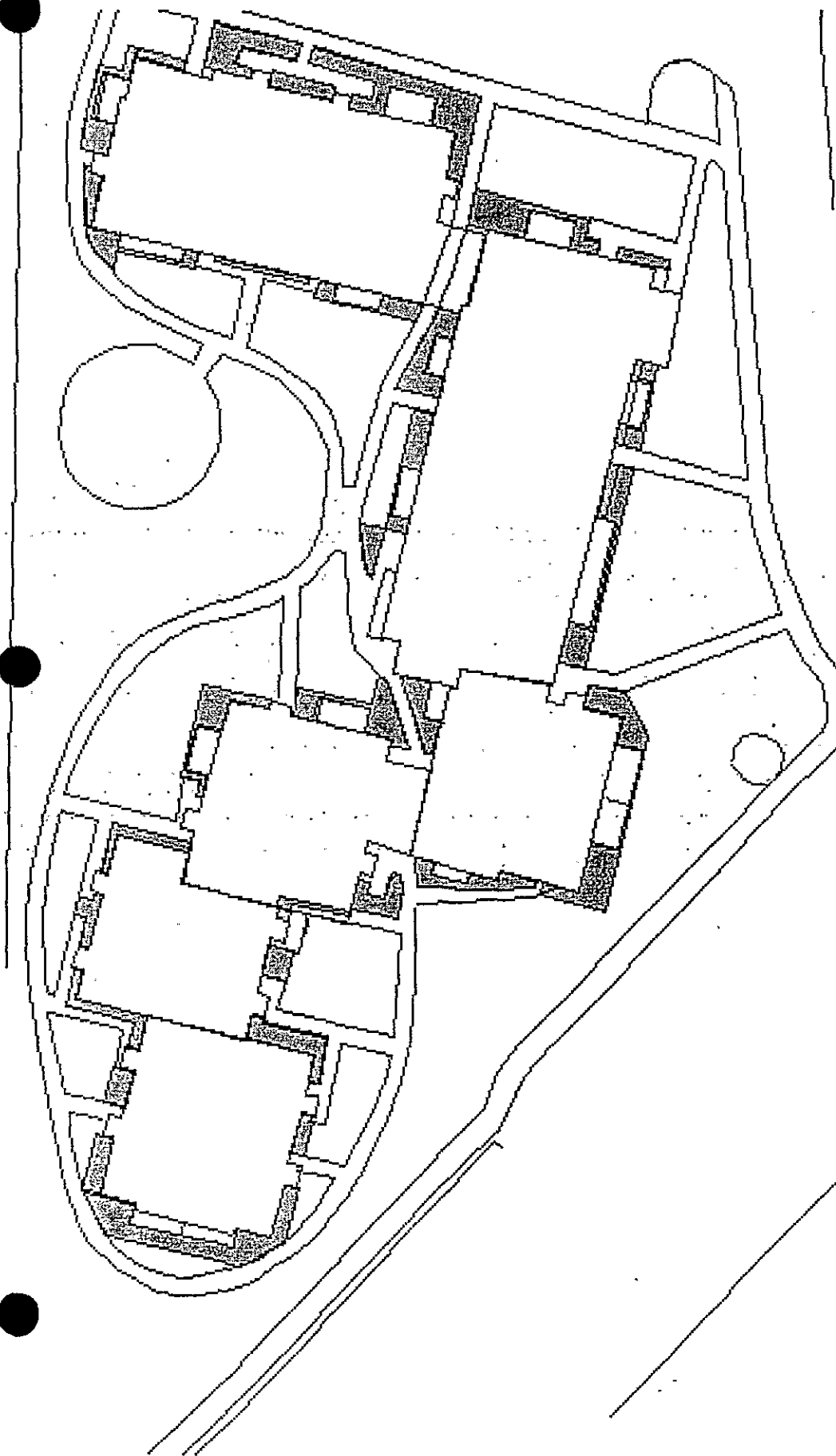
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EXHIBIT B

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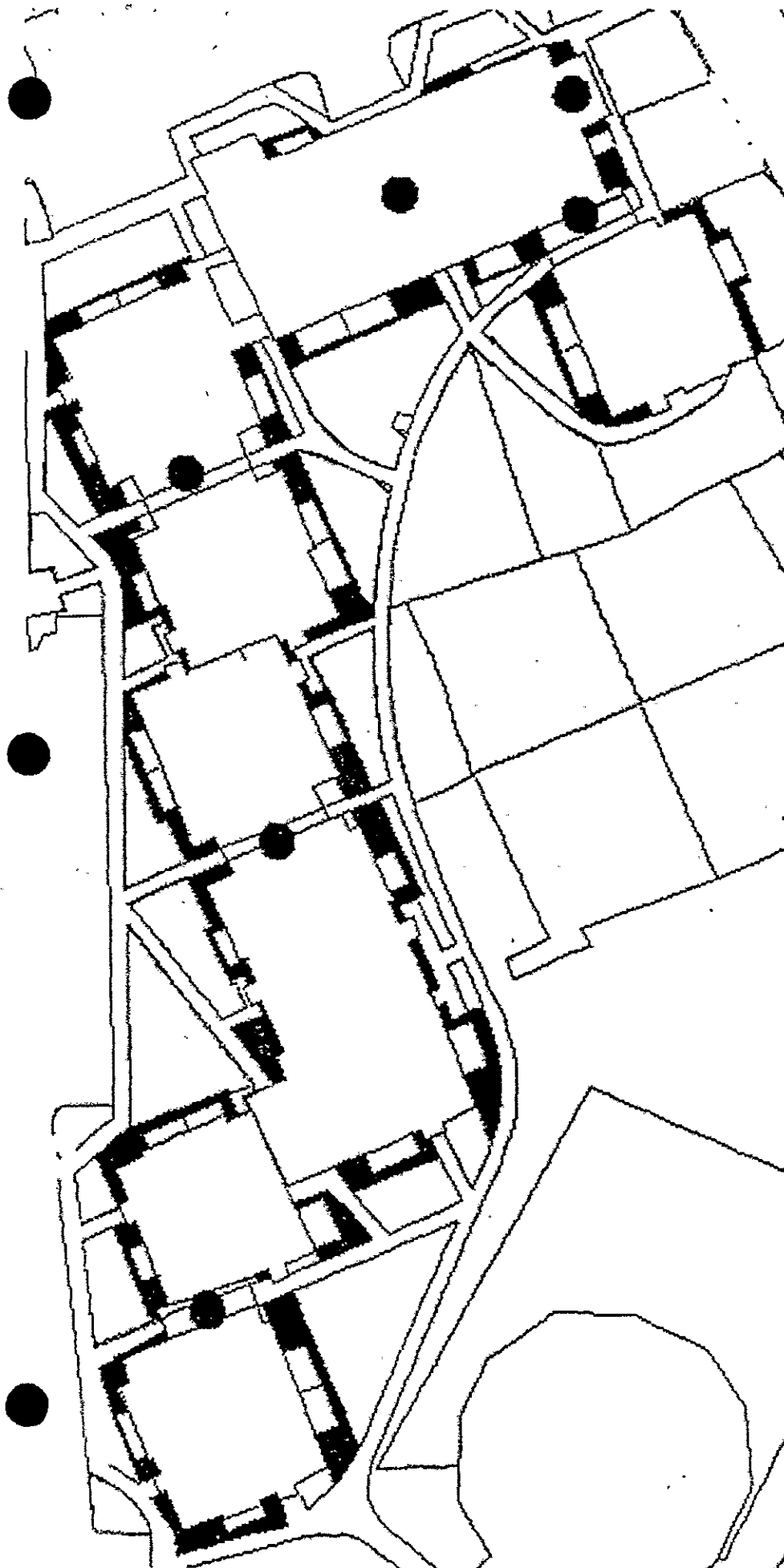


B1 - Area Capped with Cement
Section A - 2801 Pullman Ave.
Pullman Plomo Removal Site
Richmond, California



■ Cemented Area

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■ Cemented
Area

B2 - Area Capped with Cement
Section B-3001 Pullman Ae.
Pullman Plomo Removal Site
Richmond, California

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feet

40

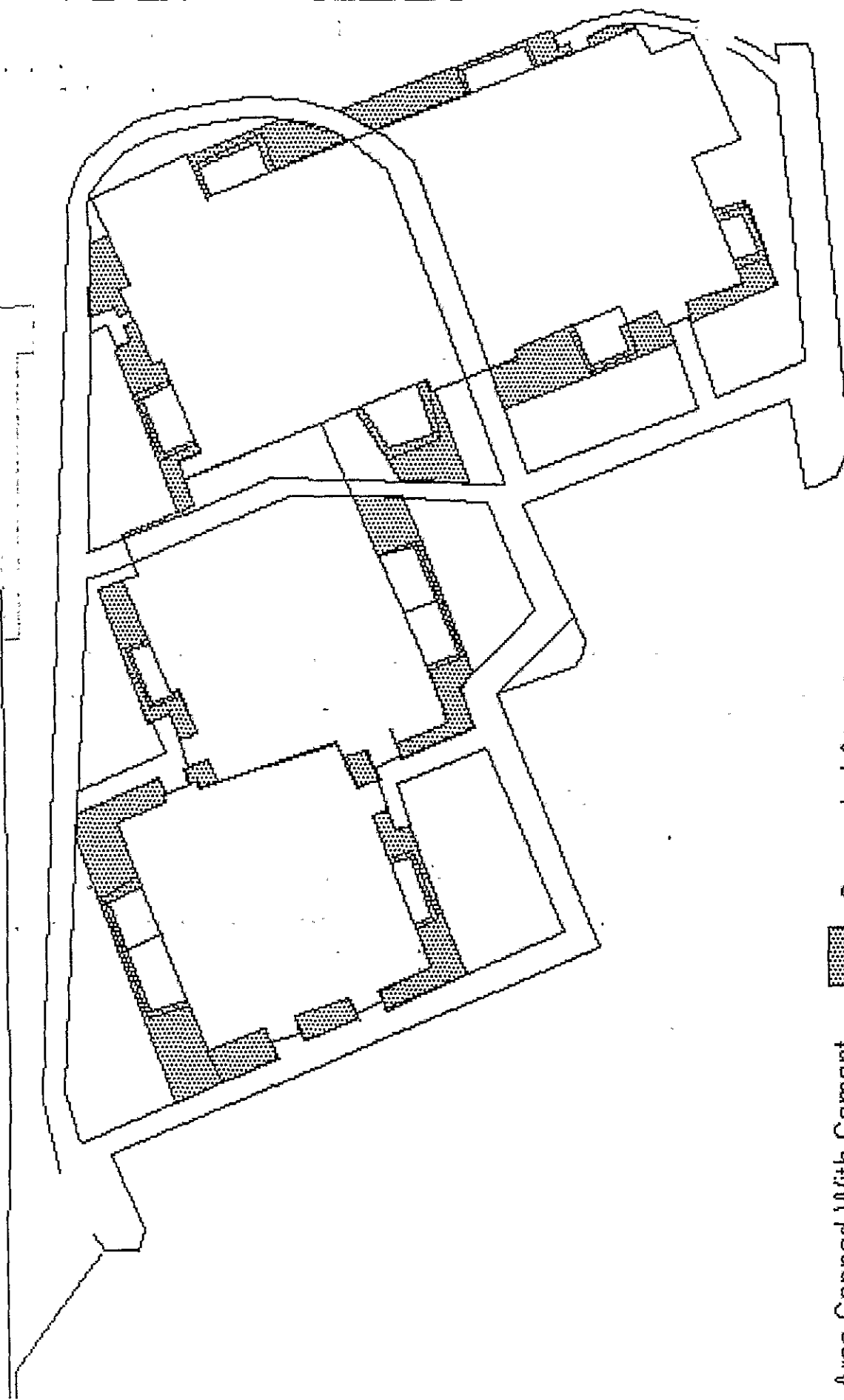
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40

Cemented Areas



B3 - Area Capped With Cement
Section C - 3201 Pullman Ave.
Pullman Plomo Removal Site
Richmond, California



B4 -Area Capped with Cement
Section E - 3100 Pullman Ave
Pullman Plomo Removal Site
Richmond, California

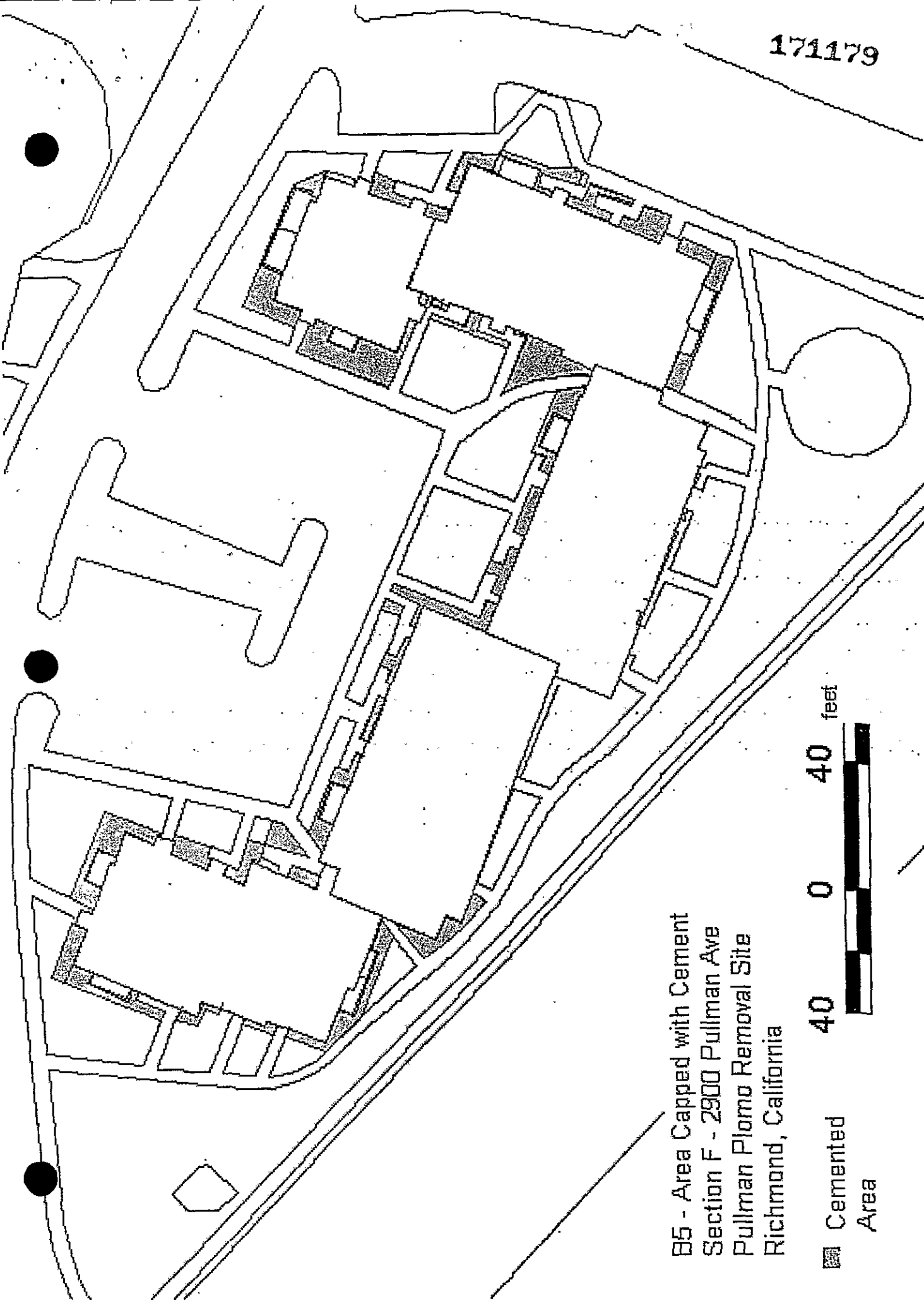
■ Cemented Area

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40 0 40 feet

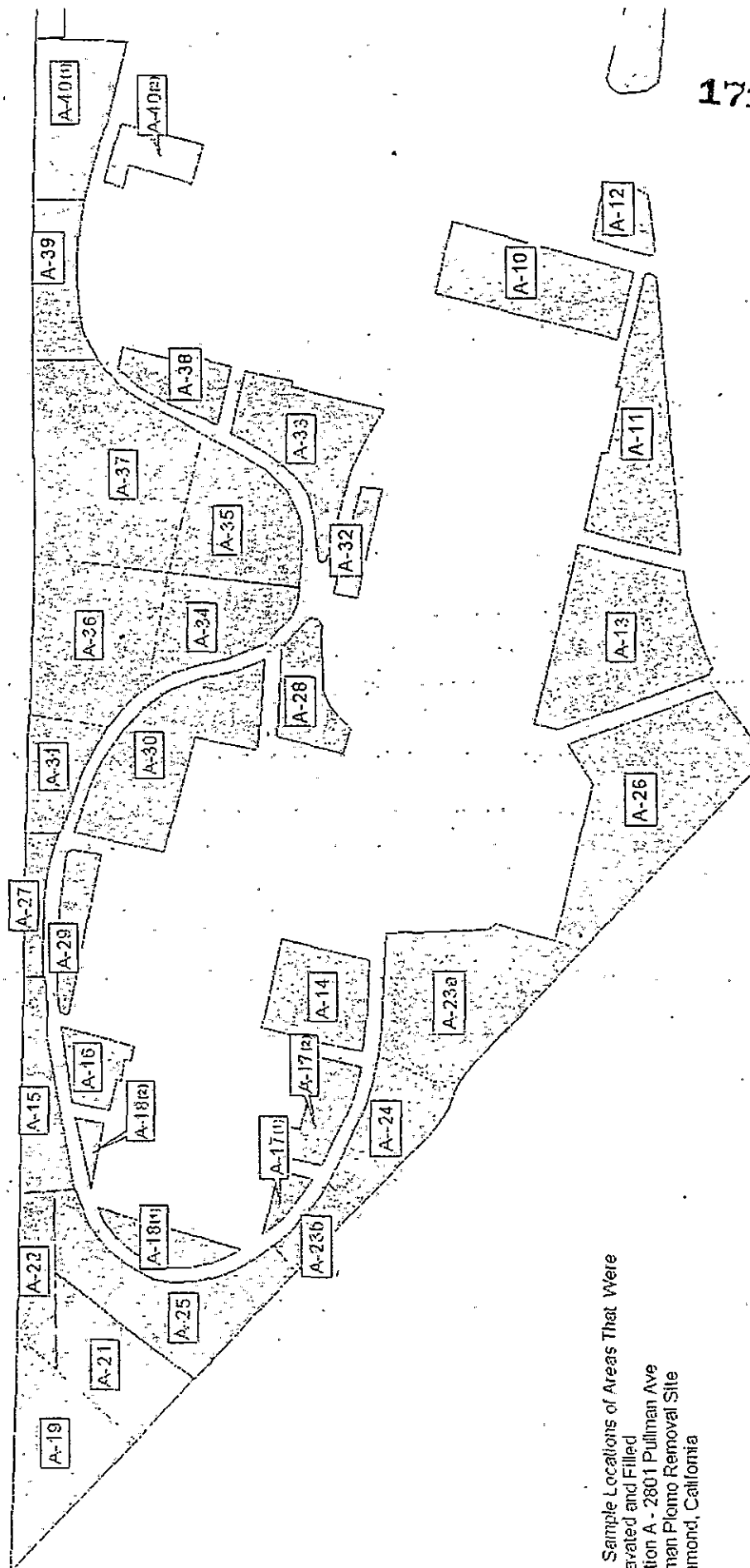


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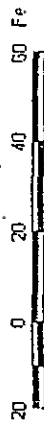
B5 - Area Capped with Cement
Section F - 2900 Pullman Ave
Pullman Plomo Removal Site
Richmond, California

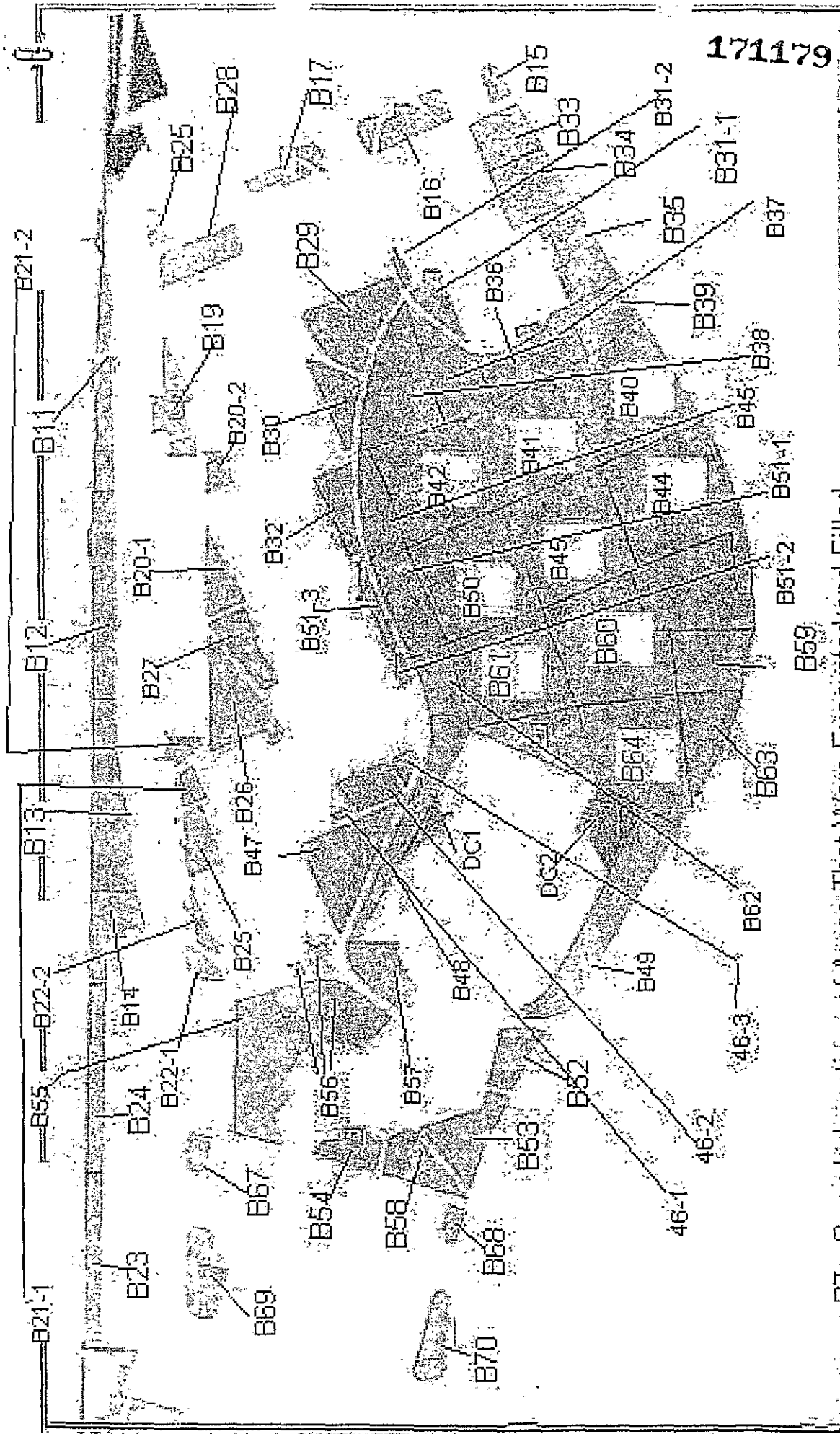




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B6 - Sample Locations of Areas That Were
Excavated and Filled
Section A - 2801 Pullman Ave
Pullman Plomo Removal Site
Richmond, California

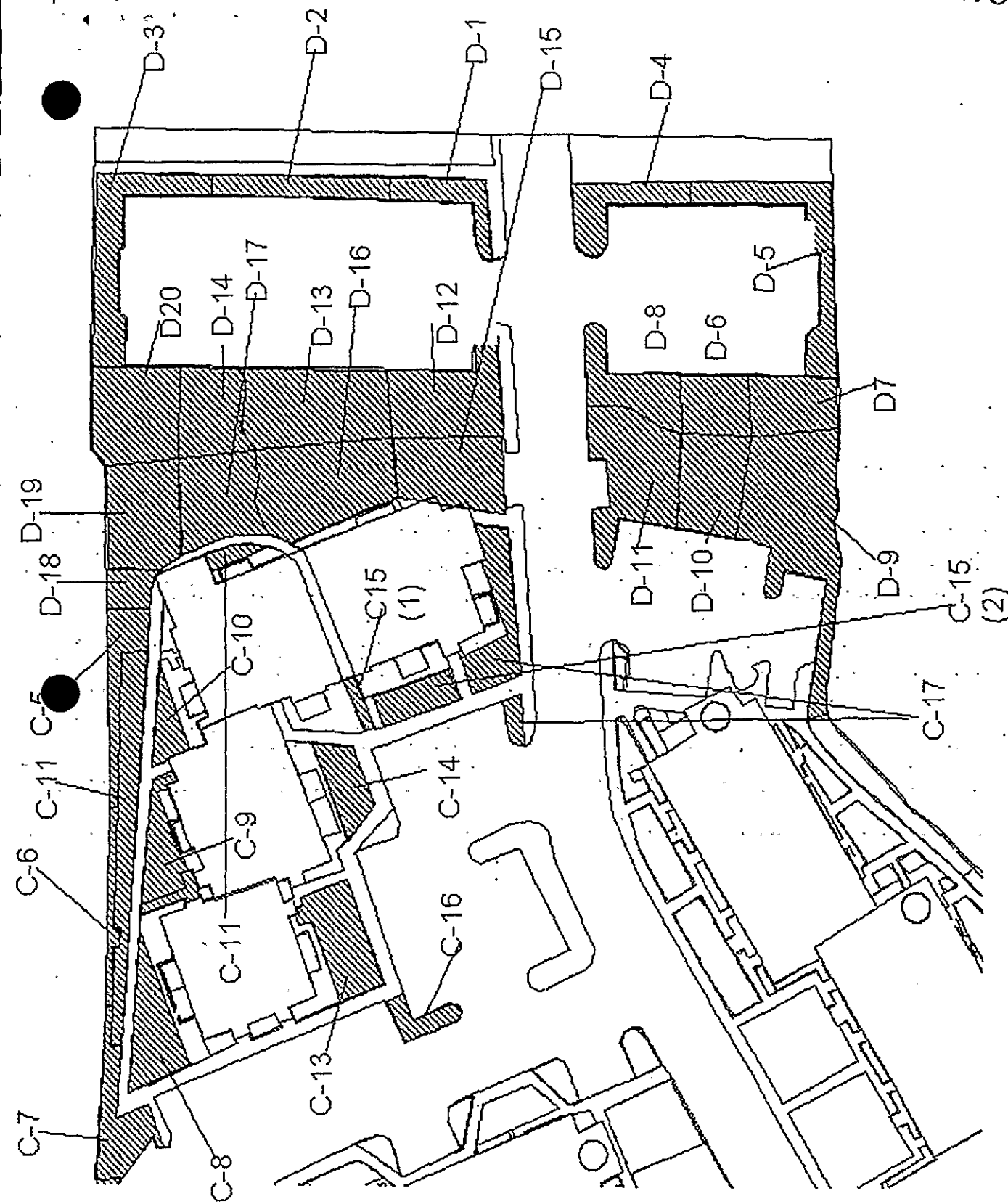




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70 ft. 0 ft. 70 ft.

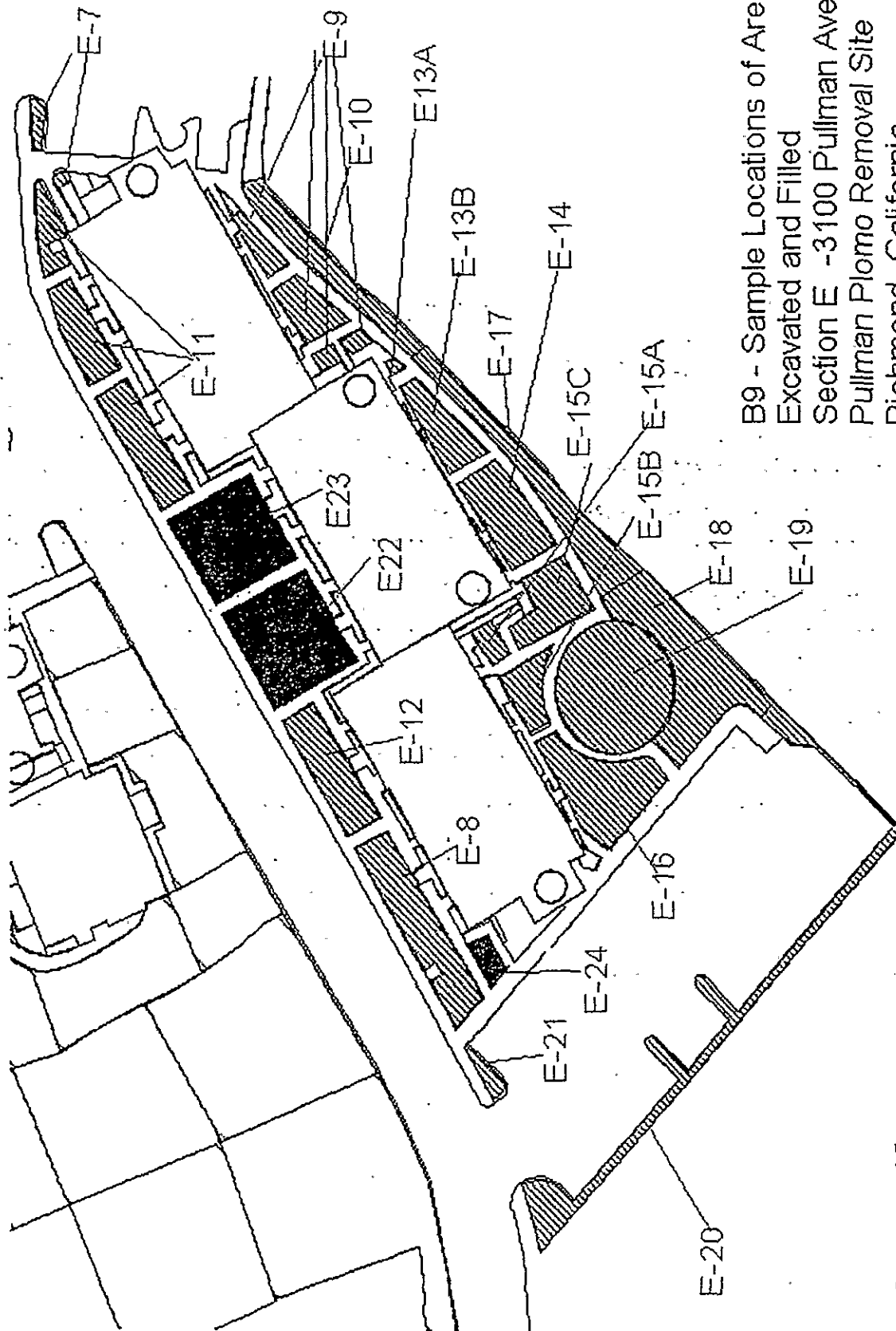
B7 - Sample Locations of Areas That Were Excavated and Filled
 Section B-3001 Pullman Ave.
 Pullman Plomo Removal Site, Richmond, California



B 8- Sample Locations of Areas That Were Excavated and Filled Section C & D - 3201 Pullman Ave

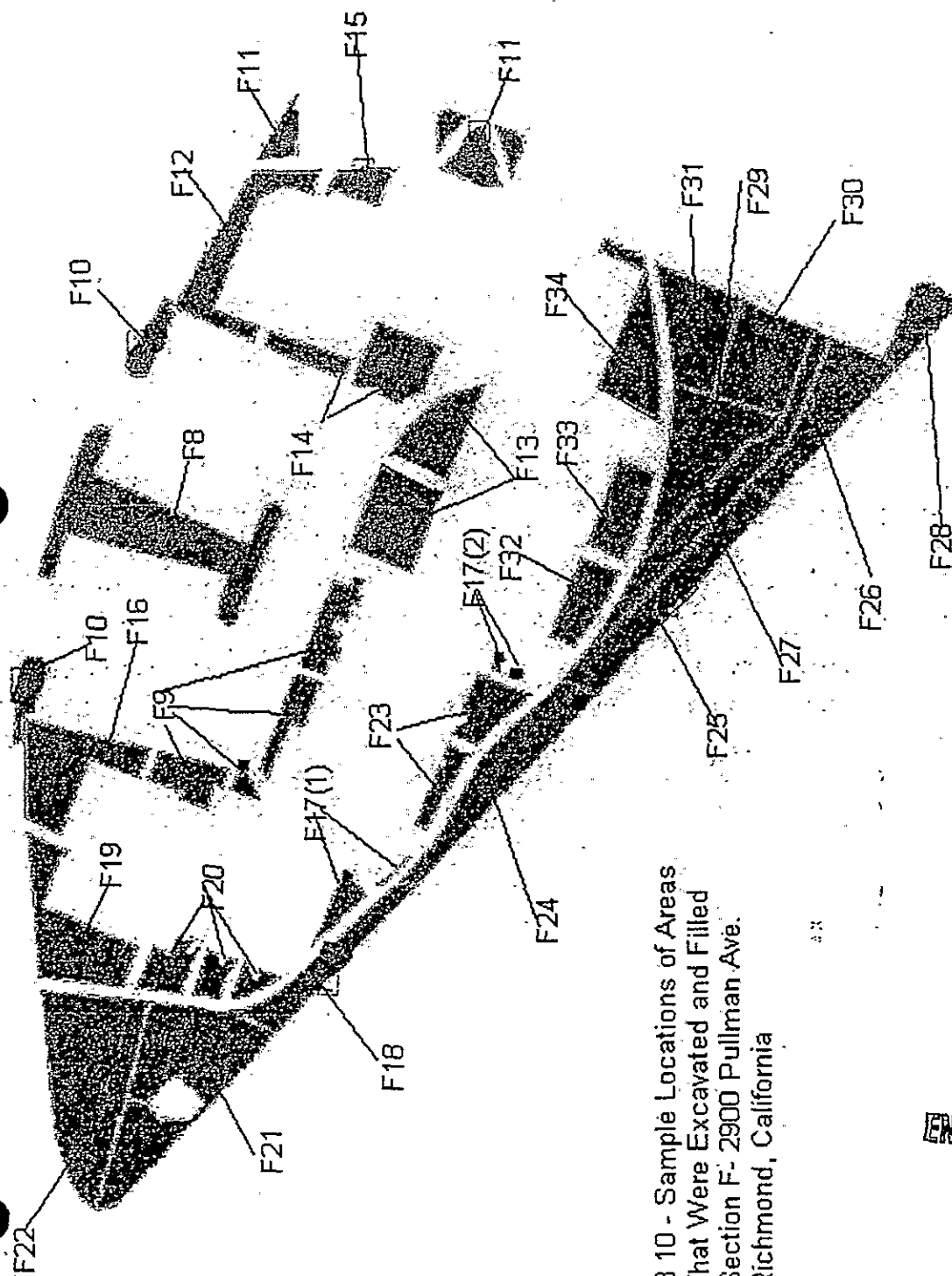
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B9 - Sample Locations of Areas That V
Excavated and Filled
Section E - 3100 Pullman Ave
Pullman Plomo Removal Site
Richmond, California



40 0 40 feet

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B 10 - Sample Locations of Areas
That Were Excavated and Filled
Section F- 2900 Pullman Ave.
Richmond, California

END OF DOCUMENT